IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 761 of 2001

in

SPECIAL CIVIL APPLICATIONNo 2263 of 1990

with

CIVIL APPLICATION NO. 8723 OF 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C J BHATT

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 761 of 2001

MR HJ NANAVATI for Appellant No.

Mr.H.D.Dave, learned A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 29/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant - petitioner has challenged in this appeal judgment and order dated 23.02.2001 passed by the learned single Judge of this Court dismissing his special civil application no. 2263 of 1990 on the ground of delay as well as on merits.

#. Learned counsel Shri Nanavaty for the appellant petitioner vehemently submitted that the learned single Judge committed grave error in dismissing this petition on the ground of delay at the final hearing stage. He submitted that once the petition was admitted by another learned single Judge and posted for final disposal, then it ought not to have been dismissed on the ground of delay and laches. In support of this submission, Mr.Nanavaty has placed reliance on the judgment of the Hon'ble Supreme Court in case of (1) Hindustan Petroleum Corporation Ltd. and another V/s Dolly Das reported in (1999) 4 SCC 450, (2) Rameshchandra R Patel V/s Collector, Kheda reported in XX GLR page 191 and (3) Kumbhar Yakub Jusab V/s Bhuj Municipality and Others reported in 1991(2) GLR 755.

#. We may first deal with the judgment of the Hon'ble Supreme Court delivered in Hindustan Petroleum Corporation Limited's (supra). In that case, for the first time plea of delay was taken up before the Hon'ble Supreme Court and on peculiar facts of that case, the Hon'ble Supreme Court has held that such a plea of delay cannot be allowed to be raised for the first time before the Supreme Court as it was never raised before the High Court. We fail to appreciate that how this judgment of the Hon'ble Supreme Court will be applicable on facts of this case.

In Rameshchandra's case (supra), the Division Bench of this Court was dealing with the petition challenging the municipal elections and on facts of that case, the Division Bench of this court held that municipal election is not a matter of individual concerned or momentary importance but of vital public interest, therefore, on peculiar facts of that case, the Division Bench of this court held that once the petition

was admitted without objecting as to delay then it should not be dismissed on the ground of delay and laches. That is not the case here. Hence, the said judgment would not be applicable on facts of this case.

In Kumbhar Yakub Jusab's case (supra), the learned single Judge following the Division Bench of this court in case of Rameshchandra (supra), reiterated the principle laid down by the Division Bench and held that where an important question of law was involved and the writ petition was already admitted then it would not be proper for the court at a later stage to dismiss the petition on the ground of delay and laches. Thus, this judgment of the learned single Judge will also not be helpful to the appellant - petitioner on facts of this case.

#. It is a case of individual. The appellant petitioner is not illiterate person or a layman. He was initially appointed on the post of lecturer with effect from 04.05.1964. He was aggrieved by the decision of the committee which was taken in 1971 against which he made the representation for the first time on 08.10.1971 to the Government for reconsidering his case and thereafter he did not pursue the matter any further till 1975. Thus, for a period of almost 4 years, he kept quiet. In the meantime, there was a pay revision in 1971 and in view of the revision of pay, the Director of Technical Education declared allocation of the posts with effect from 01.04.1966 in non-technical subject in the institution under his control. This tempted the appellant petitioner to make second representation in 1975. It is to be noted that the appellant - petitioner was always satisfied with the representations and never pursued his legal remedy by way of writ petition before this court till October, 1989. Even after his second representation made in 1975, he continued to make representations dated 23.03.1977, 27.11.1979 and 28.05.1982. It appears that meanwhile, by letter dated 23.10.1980, he was informed by the Government that his case was under consideration. This was sought to be made a basis for filing writ petition before the learned single Judge in 1989 though he made the last representation in 1982. It is to be noted that in between, on 22.06.1983, he was appointed as a Director of College Development Council, Saurashtra University and during that period of the petition he wrote a letter to the respondent no. 2 on 29.08.1987 requesting for settlement of his long pending case (Annexure `G' to the main petition). Thenafter, as usual, he did not do anything further in the matter and after a period of more

than two years from that letter at Annexure `G', for the first time, he approached this court by way of writ petition in October, 1989 with following three main reliefs :

"(B) declare that the petitioner is eligible / entitled to be placed in the pay scale of Rs.700 - 1100 with effect from 01.04.1966 as per the Govt.Resolution dated 3.3.1972 and further entitled to the placement in the revised pay scale corresponding to Rs.700 - 1100 ;

(C) declare that the petitioner is entitled for placement in Class I cadre in view of the Govt.Resolution at Annexure `B' dated 3.3.1972 ;

(D)direct the respondents, their officers, agents and servants to place the petitioner in the pay scale of Rs.700 - 1100 with effect from 1.4.1966 and in the corresponding revised pay scale and on the basis of the said fixation, to pay to the petitioner the difference of arrears of salary within the stipulated time as may be deemed fit by this Hon'ble Court ; "

#. From the reliefs which have been claimed by the appellant - petitioner in his writ petition, it is clear that his claim that he was entitled to be placed in the pay scale of 700 - 1100 with effect from 01.04.1966 as per the Government resolution dated 03.03.1972 was hopelessly time barred. Under the circumstances, when the learned single Judge of this court refused to exercise his discretionary jurisdiction in favour of the appellant - petitioner on the ground of gross delay and laches, then certainly this court would not like to interfere with such orders in its letter patent jurisdiction.

#. In view of the above discussion, this appeal fails and hereby dismissed.

#. Civil application is dismissed as main appeal is dismissed.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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